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January 5, 1998

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Ms. Magalie R. Salas
Secretary
Federal Communications Commission
Room 222
1919 M Street, N.W.
Washington, D.C. 20554

**Re: In the Matter of Interconnection and Resale Obligations
Pertaining to Commercial Mobile Radio Services, CC
Docket No. 94-54**

Dear Ms. Salas:

Pursuant to the FCC's Public Notice DA 97-2558, released December 5, 1997, enclosed for filing in the above-referenced docket are the original and four copies of the "Additional Comments on Automatic Roaming of the Telecommunications Resellers Association." We have also submitted a diskette containing the comments in WordPerfect 5.1 format to Janice M. Jamison.

Please contact the undersigned if you have any questions.

Respectfully submitted,



David L. Sieradzki
Counsel for Telecommunications
Resellers Association

ccs: Janice M. Jamison
ITS

Enclosures

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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20054

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OFFICE OF THE SECRETARY

In the Matter of)
)
Interconnection and Resale Obligations) CC Docket No. 94-54
Pertaining to)
Commercial Mobile Radio Services)
)

**ADDITIONAL COMMENTS ON AUTOMATIC ROAMING
OF THE TELECOMMUNICATIONS RESELLERS ASSOCIATION**

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January 5, 1998

SUMMARY

The Telecommunications Resellers Association (“TRA”) submits that recent developments make it even more clear than ever that an automatic roaming requirement is essential to ensure full competition in the CMRS marketplace. Most consumers either do not own multi-mode or multi-band handsets or do not know how to reprogram their handsets to operate in a different mode or band. Thus, as a practical matter, when consumers travel to a distant market, they can use their handsets to access the CMRS network of only a single carrier -- the operator of the network on the same band and mode as the consumer’s home system. The prevailing exorbitant rates for roaming demonstrate that carriers are more than willing to exploit their resulting significant effective market power over roaming. Established incumbent CMRS providers also may have particular incentives to deny automatic roaming arrangements to new entrants such as newer broadband PCS carriers.

The Commission has already found that Title II of the Communications Act of 1934 applies to CMRS providers, and that roaming is a common carrier communications service. Section 202(a) of the Act prohibits CMRS carriers from offering roaming on a more favorable basis to affiliates than to non-affiliated carriers, or on a less favorable basis to resellers than to other parties. And Section 201(b) prohibits CMRS carriers from denying automatic roaming service to any carrier. Given the difficulty of predicting how markets will develop in the future, no “sunset” should apply to the automatic roaming requirement.

Most critically, CMRS resellers, by offering their own roaming arrangements in competition with facilities-based carriers, could generate substantial competitive pressure that could lead to more reasonable roaming rates and could generate significant consumer benefits. Specifically, if a CMRS reseller could take minutes that it purchases on a bulk basis from an underlying facilities-based carrier, and sell those minutes to carriers or consumers in distant markets, then the underlying carrier's effective monopoly over roaming would be broken.

It would appear to be straightforward as a technical matter to implement this concept. But facilities-based carriers are unlikely to do so voluntarily because it would undermine their ability to maintain high roaming rates. Accordingly, the Commission should require facilities-based CMRS carriers to provide CMRS resellers the capabilities that they need in order to offer competitive roaming service.

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)	

**ADDITIONAL COMMENTS ON AUTOMATIC ROAMING
OF THE TELECOMMUNICATIONS RESELLERS ASSOCIATION**

The Telecommunications Resellers Association ("TRA") 1/ hereby submits these comments on automatic roaming pursuant to the Public Notice issued in this docket on December 5, 1997. 2/

TRA supports the Commission's decision to refresh the record in this important proceeding on developments affecting automatic roaming. TRA submits that it is even clearer now than a year and a half ago, when the *Roaming Notice*

1/ TRA is a nationwide industry association representing more than four hundred resellers of interexchange, local exchange, and wireless telecommunications services. The National Wireless Resellers Association ("NWRA"), representing resellers of wireless services, recently merged with TRA, in recognition of the importance of the ability of service providers to offer packages that include a range of telecommunications service offerings.

2/ Public Notice, "Commission Seeks Additional Comment On Automatic Roaming Proposals for Cellular, Broadband PCS, and Covered SMR Networks," DA 97-2558 (released Dec. 5, 1997).

was issued, 3/ that commercial mobile radio service (“CMRS”) providers must be required to offer automatic roaming. Such a requirement, which is rooted in the statutory duty of common carriers not to engage in unreasonable discrimination or to unreasonably deny communications service, is necessary to promote competition and to facilitate smaller entities’ participation in the CMRS marketplace.

Moreover, no “sunset” should apply to the automatic roaming requirement. In addition, as we discuss in these comments, the provision of automatic roaming service by CMRS resellers can play a significant role in ensuring that competition brings consumers greater choices and lower prices for automatic roaming service.

I. RECENT DEVELOPMENTS CONFIRM THAT AN AUTOMATIC ROAMING REQUIREMENT WOULD ADVANCE THE PUBLIC INTEREST.

TRA believes that an automatic roaming requirement is essential to ensure full competition in the CMRS marketplace. While market forces may lead larger, more established CMRS carriers to establish automatic roaming requirements with one another, those same market forces also give those large CMRS carriers incentives to deny automatic roaming arrangements with less well established CMRS carriers.

3/ *Interconnection and Resale Obligations Pertaining to Commercial Mobile Radio Services*, CC Docket No. 94-54, Second Report and Order and Roaming Notice of Proposed Rulemaking, 11 FCC Rcd 9462 (1996) (“*Roaming Notice*”).

Automatic roaming is a vital convenience to CMRS consumers who travel outside their home regions. Even when consumers have handsets that are physically capable of being converted between modes (*e.g.*, cellular, broadband PCS, and covered SMR) or bands (*e.g.*, A-block vs. B-block cellular and broadband PCS), most consumers do not know how to reprogram their handsets to operate in a different mode or band. This means that a consumer traveling to a distant market, as a practical matter in most circumstances, can use his or her handset to access the CMRS network of only a single carrier -- the operator of the network on the same band and mode as the consumer's home system. This gives the operator of that distant network the ability to deny automatic roaming capability or (perhaps more likely) to charge the consumer unreasonably high roaming rates.

Thus, even if consumers have choices of CMRS providers in their home markets, once they have selected a CMRS provider in their home market and have purchased a handset, they are effectively captive consumers when they "roam" in distant markets. Operators of CMRS networks may exploit this effective market power by denying automatic roaming arrangements to CMRS operators in distant markets, or by providing automatic roaming only at exorbitant rates.

Well-established incumbent CMRS providers may have particular incentives to deny automatic roaming arrangements to new entrants such as broadband PCS carriers. For example, cellular carriers may seek to deny automatic

roaming capability to new broadband PCS entrants, and A- or B-block PCS carriers may seek to deny automatic roaming to new C-, D-, E-, or F-block entrants. 4/ The difficulties that many C- and F-block broadband PCS licensees have experienced recently in raising capital and building out their networks indicate that better established CMRS licensees may find it advantageous to deny these new entrants the roaming arrangements that will be critical for them to offer competitive service packages, thus raising further barriers to entry and protecting the existing carriers' market share. The same incentives for many incumbent carriers not to offer resale agreements, or to impose unreasonable restrictions on resale, also are likely to lead those carriers to deny automatic roaming arrangements to smaller carriers. 5/

4/ The Commission observed that "when APC in the Washington/Baltimore area became the first licensee in the nation to offer broadband PCS service, its largest cellular competitor concentrated its advertising campaign on the unavailability of roaming to APC's customers." *Roaming Notice*, ¶ 11.

5/ The National Wireless Resellers Association ("NWRA"), now merged with TRA, conducted a broad survey of wireless resellers six months ago, and found that over 60 percent of wireless resellers were finding it difficult or impossible to obtain resale arrangements from PCS providers, despite the resellers' efforts to obtain such agreements. National Wireless Resellers Association, 1997 Survey of Wireless Resellers at 10 (July 1997) ("*Survey*"), attached as Exhibit A to NWRA's July 2, 1997 comments in opposition to the Personal Communications Industry Association's May 22, 1997 Petition for Forbearance (DA 97-1155) with respect to resale and other requirements for PCS providers. Since automatic roaming is, in essence, a form of resale (basically enabling carriers to resell service in distant markets to enable their customers to place and receive calls in those markets), it is likely that similar difficulties would exist in the development of automatic roaming arrangements.

II. SECTIONS 202(A) AND 201(B) OF THE ACT REQUIRE CMRS CARRIERS TO PROVIDE AUTOMATIC ROAMING ON A NONDISCRIMINATORY BASIS.

In the *Roaming Notice*, the Commission sought comment on whether, under an automatic roaming requirement, carriers should be required to offer “like” roaming agreements to other similarly situated providers upon reasonable request, without unreasonably discriminating on rates, terms, and conditions. ^{6/} TRA submits that such an outcome is required under Section 202(a) of the Communications Act of 1934, as amended (“Act” or “Communications Act”), which requires all common carriers, including CMRS carriers, to offer all communications services in a manner that is not unreasonably discriminatory. ^{7/} The Commission concluded, in the *Second Report and Order* included in the same document as the *Roaming Notice*, that Section 202(a) applies to CMRS providers and governs the provision of common carrier communications services, and that roaming is a common carrier communications service. ^{8/}

CMRS providers’ statutory obligation to offer roaming in a manner that is not unreasonably discriminatory compels the answers to several other questions asked in the *Roaming Notice*. ^{9/} Specifically, it is axiomatic that Section

^{6/} *Roaming Notice*, ¶ 22.

^{7/} 47 U.S.C. § 202(a).

^{8/} *Roaming Notice*, ¶ 10.

^{9/} *Roaming Notice*, ¶ 23.

202(a) of the Act prohibits carriers from offering any communications service, including roaming, on a more favorable basis to affiliates than to non-affiliated carriers; on a more (or less) favorable basis to carriers in overlapping or geographically proximate markets than to carriers in other markets; or on a more favorable basis to carriers with whom they have reciprocal roaming arrangements than to carriers seeking one-way roaming arrangements.

Moreover, Section 201(b) of the Act prohibits any common carrier, including CMRS providers, from unreasonably denying any communications service, including automatic roaming, to any party. ^{10/} The fact that a party is not affiliated with the carrier, or located in a geographically distant, proximate, or overlapping market, is not a “reasonable” basis under the statute for a denial of service. Nor is the fact that the party has a relatively small market share, and for that reason is unable to offer the carrier an attractive reciprocal roaming arrangement, a reasonable basis for the carrier to deny automatic roaming service on a one-way basis.

Critically, under Sections 202(a) and 201(b), CMRS carriers have the same obligation to offer roaming arrangements to CMRS resellers as to any other CMRS carrier. And wireless resellers have the same rights to purchase and resell roaming service, and to create their own roaming offerings (as discussed in more detail below). The fact that the party seeking roaming arrangements is a reseller,

^{10/} 47 U.S.C. § 201(b).

rather than a facilities-based carrier, is not a “reasonable” basis for discrimination or denial of service. In some cases, facilities-based CMRS operators provide roaming service to their end user customers at one rate but impose a higher rate upon resellers when they provide the identical roaming service to resellers. The Commission should clarify that such pricing discrimination is *per se* unreasonable and unlawful under the Communications Act.

Finally, the Commission should not adopt the tentative conclusion in the *Roaming Notice* that any roaming requirements should apply only for a transitional period, and should not impose any “sunset” on an automatic roaming requirement. 11/ First, given that roaming is a communications service, Sections 201(b) and 202(a) of the Act provide no warrant for automatically eliminating that requirement after a set time period. 12/ Second, predictive judgments about the necessity for an affirmative automatic roaming requirement cannot be made in advance; sunset requirements therefore are, by definition, of questionable legality. Third, the impediments to competition in the market for roaming have little to do with the overall extent of CMRS capacity and number of CMRS providers. Rather,

11/ *Roaming Notice*, ¶ 32.

12/ A forbearance finding under Section 10 of the Act, 47 U.S.C. § 160, would require a factual inquiry that cannot be satisfied five years in advance without knowing the factual circumstances that actually will exist at that future time. See NWRA Comments in Opposition to the Petition for Forbearance filed by the Broadband Personal Communications Services Alliance of the Personal Communications Industry Association (filed July 2, 1997).

as discussed above, even if consumers' home markets for CMRS become increasingly competitive, away-from-home CMRS markets (*i.e.*, roaming) will be less competitive because most consumers are effectively locked into using the network of the away-from-home CMRS carrier operating on the same mode and band. The prevailing exorbitant rates for roaming demonstrate that carriers are more than willing to take advantage of this situation.

III. ROAMING OFFERINGS BY CMRS RESELLERS COULD CREATE A COMPETITIVE CHECK THAT WOULD GIVE CONSUMERS GREATER CHOICES AND LOWER PRICES FOR ROAMING SERVICE.

The Commission sought comment in the *Roaming Notice* on what “benefits might be generated by enabling resellers to obtain roaming agreements.” ^{13/} CMRS resellers need the ability, not only to participate in the roaming arrangements obtained by their underlying facilities-based carrier, but also to obtain their own roaming arrangements directly from carriers in distant markets. In addition, as we discuss below, by offering their own roaming arrangements in competition with facilities-based carriers, resellers could generate substantial competitive pressure that could lead to more reasonable roaming rates and a greater variety of arrangements, providing significant consumer benefits. ^{14/}

^{13/} *Roaming Notice*, ¶ 25.

^{14/} Having the option of negotiating their own roaming arrangements could enable CMRS resellers to offer uniquely tailored service packages that could provide significant benefits to consumers, and would enable resellers to perform their unique function of adding value and enhancing the competitive marketplace. See

[Footnote continued]

Many CMRS carriers offer automatic roaming at what appear to be exorbitant rates -- as much as 95 cents or more per minute, plus "daily" rates that are often as high as \$3.00 or more. These rates would appear to be far in excess of the actual cost of providing automatic roaming. This widespread phenomenon poses a significant public policy problem, challenging the Commission's basic statutory mission of assuring reasonable rates to consumers. ^{15/} As we discussed above, given most consumers' practical inability to switch modes or bands on their CMRS handsets, facilities-based CMRS carriers possess effective market power over roamers from distant markets operating in the same mode and band, and often are able to impose roaming rates that far exceed the actual cost of providing that service.

[Footnote continued]

Interconnection and Resale Obligations Pertaining to Commercial Mobile Radio Services, CC Docket No. 94-54, First Report and Order and Further Notice of Proposed Rulemaking, 11 FCC Rcd 18455, 18462, ¶ 10 (1996) ("*Resale Order*"), *recon. pending, pets. for review pending sub nom. Cellnet Communications, Inc. v. FCC* (6th Cir.). *See also NWRA Survey, supra*, n. 5, at 6-8 (showing that resellers price their offerings, on average, 10 percent below the retail rates of the underlying carriers, and that resellers can add value and provide service to niche market opportunities often overlooked by facilities-based carriers, such as by designing services and service packages for small business customers, offering prepaid cellular services for credit-impaired consumers, and targeting services to language minorities, to name a few).

^{15/} According to CTIA, CMRS providers garnered \$1.4 billion in roaming revenues in the first six months of 1997. CTIA Semi-Annual Data Survey Results (June 1997). On an annual basis, this represents \$2.8 billion in roaming revenues. If competition were to drive roaming rates down by ten percent, consumers could save \$280 million a year.

CMRS resellers could provide much-needed market discipline on roaming rates, and thus could enable the Commission to advance the interests of consumers without engaging in intrusive rate regulation. Specifically, if a CMRS reseller could take minutes that it purchases on a bulk basis from an underlying facilities-based carrier, and sell those minutes to carriers in distant markets (or to individuals in distant markets), then the underlying carrier's effective monopoly over roaming would be broken. In effect, the reseller would be offering roaming service in competition with the underlying carrier, thus potentially driving down roaming rates.

An illustrative example, using hypothetical carrier names and markets, may help clarify this concept. Under present operating conditions, customers of "MinnCell," a facilities-based, B-band cellular carrier operating in a specific market in Minnesota, have only one practical choice when they travel to a particular city in Texas: unless they have multi-band or multi-mode handsets and know how to reprogram them, they must operate on the network of "TexCell," the facilities-based, B-band cellular carrier operating in that city. Even if MinnCell and TexCell have entered a mutual automatic roaming arrangement with one another, they may well impose relatively high charges on one another's customers. A customer of MinnCell traveling in the Texas city has no choice but to pay those exorbitant roaming charges imposed by TexCell and recovered through MinnCell's bills.

Now consider how much more competitive the roaming market would be if ResellCo, a CMRS reseller in the Texas city, could offer its own roaming service in

competition with the roaming service offered by the facilities-based carrier. If ResellCo and other CMRS resellers in that city could resell the same TexCell airtime that they offer their own end user customers to carriers in distant markets, such as MinnCell (or a reseller of MinnCell or individual customers), a competitive marketplace for roaming service could develop. TexCell would no longer have a virtual monopoly in roaming service offerings. While customers from distant markets with B-side cellular handsets would still, in most cases, use TexCell's physical cellular network when traveling to the city in Texas, these customers (or their carriers) would be able to obtain access to that network from multiple vendors and at competitive rates. Thus, reseller offerings of roaming could convert the market for roaming into a substantially more competitive marketplace. ^{16/} Moreover, this would also enable carriers to create CMRS offerings with a national footprint.

Technically, it would appear to be relatively simple to implement this concept. A CMRS reseller would be fully able to offer roaming service to customers

^{16/} These measures would facilitate a wireless marketplace in which "there is real choice, competition is working, and the consumer is king." Remarks by William Kennard, Chairman, Federal Communications Commission, to Practicing Law Institute (December 11, 1997, Washington, D.C.) (as prepared for delivery). Chairman Kennard's list of the consumer's "fundamental rights in the telecommunications marketplace" apply to wireless service no less than to wireline service, and many of the items on the list are particularly applicable to the consumer's right to competitive, automatic roaming: "1. Consumers must have the right to choose providers -- from as wide a variety of providers as the market will bear. 2. Consumers must be able to move from one provider to the other. . . . 5. Consumers must be able to change carriers without paying unnecessary fees." *Id.*

from distant areas or to the carriers serving those customers if the reseller's underlying carrier simply would load into its switch the blocks of telephone numbers and associated billing data of the out-of-region customers to be served on a roaming basis by the reseller. 17/ Given the facilities-based carriers' current market power over roaming customers and the high rates they are now enjoying, however, they may not be willing to take these steps voluntarily in the absence of a mandate from the Commission. Accordingly, the Commission should require facilities-based CMRS carriers to provide CMRS resellers the billing and call-tracking capabilities that they need in order to offer competitive roaming service.

17/ In a long-term number portability environment, this should be virtually costless. Even under current circumstances it should not be significantly costly or burdensome, particularly given that most of these telephone numbers would be loaded in contiguous numerical blocks.

CONCLUSION

For the reasons discussed above, TRA submits that the Commission should require CMRS carriers to offer unrestricted access to automatic roaming, with no "sunset." The Commission also should expand competition for roaming by enabling resellers to create roaming services.

Respectfully submitted,

TELECOMMUNICATIONS RESELLERS
ASSOCIATION

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